



CNR: KAHC010284552020

NC: 2026:KHC:47237
MFA No. 4193 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO. 4193 OF 2020 (ECA)

BETWEEN:

THE NATIONAL INSURANCE COMPANY LTD.,
371.A 3RD FLOOR,
PRESTIGE SHOPPING CENTER,
RAMASWAMY CIRCLE,
MYSORE
NOW REP. BY ITS
REGIONAL OFFICE NO.144,
SHUBHARAM COMPLEX,
MG.ROAD, BENGALURU - 560 001
REP BY ITS AUTHORIZED SIGNATORY

...APPELLANT

(BY SRI. A.M.VENKATESH, ADVOCATE)

AND:

1. PUTTASWAMAPPA
S/O MADAPPA,
AGED ABOUT 61 YEARS,
2. PUTTATAYAMMA
W/O PUTTASWAMAPPA,
AGED ABOUT 56 YEARS

BOTH ARE R/AT HASAGULI VILLAGE,
BEGURU HOBLI,
GUNDLUPETE TALUK

Digitally signed
by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA



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3. H.N CHINNASWAMY
S/O NAGAPPA,
AGED ABOUT 51 YEARS,
R/AT HASAGULI VILLAGE,
BEGURU HOBLI,
GUNDLUPETE TALUK.

...RESPONDENTS

(BY SMT. B.N.MANJULA, ADVOCATE FOR
SRI. R.C.NAGARAJ, ADVOCATE FOR R1& R2;
R3 NOTICED SERVED)

THIS MFA IS FILED U/S.30(1) OF THE EMPLOYEES
COMPENSATION ACT, 1923, AGAINST THE JUDGMENT AND
AWARD DT.13.03.2020 PASSED IN ECA NO.08/2019 ON THE
FILE OF THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND COMMISSIONER FOR WORKMENS COMPENSATION,
CHAMARAJANAGARA.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT ,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

The Insurance Company has preferred this appeal
challenging the judgment and award dated 13.03.2020 passed
in ECA No.8/2019 by the Additional Senior Civil Judge and
Commissioner for Workmen's Compensation, Chamarajanagara
(hereinafter referred to as 'the Commissioner'), whereby the
Commissioner, partly allowed the petition filed by the



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respondents-claimants under Sections 22 of the Employee's Compensation Act, 1923 (for short 'the ECA') and awarded a compensation of Rs.8,95,840/- along with interest at the rate of 12% per annum from one month after the accident i.e., from 05.09.2008 till its realization.

2. The brief facts which are necessary for disposal of this appeal are that, deceased in this case one, Mallu was working under respondent No.1 before the Commissioner as a driver in his tractor and trailer bearing Reg.No.KA-10-T-3409 and KA-10-T-3410. The said tractor and trailer was insured with appellant.

3. Things stood thus, on 05.08.2008, at about 11:00 a.m., as per the instructions of employer, the deceased employee was proceeding in the tractor to bring fertilizer from Beguru Village to the land of the employer. While he was returning from Hasuguli Village and had reached a place called Tagaduru Gate, situated on the Bengaluru-Nilgiri Main Road, the said tractor, due to the rash and negligent driving of the deceased, went out of control and toppled, resulting in the death of the



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deceased employee, who was working as the driver of the tractor. Accordingly, the legal representatives of the deceased Mallu filed a claim petition under Sections 22 of the Employees' Compensation Act before the Commissioner in ECA No.8/2019, seeking compensation on account of the accidental death of the deceased Mallu arising out during the course of his employment.

4. The Commissioner upon assessment of oral and documentary evidence, partly allowed the petition and awarded a compensation as stated *supra* and directed the Insurance Company to pay the compensation. The Insurance Company in this appeal challenged the quantum of compensation as well as the employer-employee relationship.

5. Heard the learned counsel for the appellant-Insurance Company and learned counsel for the respondents-claimants.

6. Apart from urging several other contentions, the learned counsel for the appellant-Insurance Company primarily contended that the Commissioner has grossly erred in awarding exorbitant compensation by taking the monthly income of the



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deceased at Rs.8,000/-, relying upon the notification dated 31.05.2010, which came into effect subsequent to the date of the accident, i.e., 05.08.2008. According to him, the Commissioner ought to have considered the income of the deceased at Rs.4,000/- per month, as prescribed under the notification dated 08.11.2000. He further contended that, since there is a statutory cap on the income that can be taken into consideration while determining compensation under the Employees' Compensation Act, the Commissioner could not have taken the income in excess of the prescribed limit. He also contended that the claimants had failed to establish the employer-employee relationship between the deceased and Respondent No.1, namely, the owner of the tractor, by producing reliable and cogent evidence. With the submission he prays to allow the appeal. In order to buttress his argument he relied the judgment of the Hon'ble Apex Court in the case of ***Surekha and others vs Branch Manager, National Insurance Co. Ltd.*** reported in ***2017 ACJ 2389 and Kerala State Electricity Board vs. Valsala K.,*** reported in ***2000 ACJ 5.***



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7. *Per contra*, the learned counsel for the claimants contended that the Commissioner was not justified in taking the monthly income of the deceased at Rs.8,000/-. She submitted that RW.2, the employer, had categorically deposed in his evidence that the deceased was drawing wages of Rs.4,500/- per month, apart from bata of Rs.100/- per day. She further contended that RW.2, being the owner of the tractor and trailer, had himself admitted in his evidence that the deceased was employed under him as a driver. Therefore, no further documentary evidence was required to establish the employer–employee relationship between the deceased and the employer. By placing reliance on the judgment of the Division Bench of this court in the case of ***The Managing Director, Benagaluru Urban & Rural District, Co-operative Milk Producers' Societies Union Ltd., vs. Nirupama, J and others***, in MFA No.6905/2018 (WC) dated 10.11.2020, she submit that the Division Bench of this Court, while placing reliance on the judgment of the Hon'ble Apex Court, in the case of ***Jaya Biswal and Others Vs. Branch Manager, IFFCO TOKIO General Insurance Company Limited and***



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another reported in ***(2016) 11 SCC 201***, has categorically held that there cannot be a capping for the income of the employee and the compensation has to be awarded on the basis of actual monthly wages drawn by the deceased. With these submissions she prays to dismiss the appeal by enhancing the compensation.

8. I have given my anxious consideration both on the submissions and perused the materials available on record.

9. On careful examination of the evidence on record, the occurrence of the accident in question and the coverage of the offending tractor under the insurance policy issued by the appellant-Insurance Company are not in dispute. Further, on perusal of the evidence of RW.2, who is the employer, it is evident that he has categorically deposed that the deceased was employed under him as a driver of his tractor and that the accident occurred during the course of his employment. Even otherwise, it is an admitted fact that the deceased died while driving the tractor and trailer pursuant to the specific instructions of the owner, i.e., RW.2. In such circumstances,



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the employer–employee relationship between the deceased and the employer, namely RW.2, as well as the fact that the accident occurred during the course of employment, stand duly established. The said aspect of the matter has been rightly considered and dealt with by the Commissioner.

10. As far as the compensation awarded by the Commissioner is concerned, the Commissioner has taken the monthly income of the deceased at Rs.8,000/- by placing reliance on the notification dated 31.05.2010. No doubt, the accident occurred in the year 2008, prior to the issuance of the said notification, and at the relevant point of time, the notification dated 08.11.2000 was in force, under which the monthly income was prescribed at Rs.4,000/- per month.

11. In the instant case, on careful examination of the evidence of RW.2, the employer, it is evident that he has categorically deposed before the Commissioner that the deceased was receiving wages of Rs.4,500/- per month, apart from bata of Rs.100/- per day. Though the Insurance Company cross-examined RW.2, nothing worthwhile has been elicited



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from his evidence to discredit or discard his assertion with regard to the wages paid to the deceased. As regards the contention raised by the learned counsel for the Insurance Company that, since the notification dated 08.11.2000 prescribed a ceiling of Rs.4,000/- per month, the income in excess thereof could not be taken into consideration for determining the compensation, the Division Bench of this Court in the case of ***The Managing Director BAMUL*** stated *supra* while considering the similar issue, in paragraph Nos.34 and 35 held as under:

"34. The answer to this contention of the learned counsel has been answered by the Apex Court in its recent pronouncement rendered in the case of K.Sivaraman & Others Vs. P.Sathishkumar & Another [Civil Appeal No.9046 of 2019 (arising out of SLP (C) No.18110/2019) disposed of on 13.02.2020] - (2020) 4 SCC 594. The Apex Court, while dealing with a case relating to a claim arising under the Act, has held as follows at paragraph 26:

"Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4,000 even where an employee was able to prove the payment of a monthly wage in excess of Rs.4,000. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing 31 to all employees compensation for accidents which occur in the course of an arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to



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them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."

(underlining by us)

35. The Apex Court has thus clearly held that the objective of the Amending Act 45 of 2009 was to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them."

12. While the Division Bench by referring the judgment of ***K.Sivaraman & Others Vs. P.Sathishkumar & Another [Civil Appeal No.9046 of 2019 (arising out of SLP (C) No.18110/2019) disposed of on 13.02.2020] - (2020) 4 SCC 594*** and so also considering the judgment of the Hon'ble Apex Court in the case of ***Jaya Biswal*** stated *supra*, while considering the income in respect of the subsequent notification dated 31.05.2010 held that, that there was no capping of the monthly income of the employee at Rs.8,000/- considering the benevolent provision of Section 4(1B) of the ECA and in the said case the Division Bench has considered the income of the deceased at Rs.10,000/-. Although a contention was raised by the learned counsel for the appellant that the bata of the income deriving out of the bata cannot be considered for



considering the income while granting compensation is concerned, Hon'ble Apex Court in the judgment ***Jaya Biswal*** referred *supra*, considered the said issue and in paragraph No.28 and taken the bata as a part of the income while granting compensation. In such circumstances, the said contention of the learned counsel for the appellant cannot be accepted.

13. As discussed *supra*, there cannot be a capping for the monthly income of the deceased as per the notification, as such the wages has to be determined by the evidence of the owner and the claimants. In the instant case as stated *supra* the owner himself has admitted that he was paying Rs.4,500/- per month plus Rs.100/- bata per day, then the income has to be considered at **Rs.7,500/-** (Rs.4,500 + Rs.3,000 (Rs.100 x 30 = Rs.3,000)).

14. Under Section 4 of the Employees' Compensation Act, in case of death, compensation is payable at 50% of monthly wages multiplied by relevant factor from Schedule IV. Therefore the calculation of compensation would be,



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Monthly wages = Rs.7,500/-

50% thereof = Rs.3,750/-

Relevant factor for age 21 = 222.71

Compensation = Rs.3,750/- × 222.71 =

Rs.8,35,162/-

Funeral expenses = Rs.10,000/-

15. Thus, the claimant, in modification of the impugned award, would be entitled to the following sums:

Sl. No.	Particulars	Amount (In Rs.)
1.	Towards future loss of income	8,35,162
2.	Funeral expenses	10,000
	Total	8,45,162

16. Thus, the claimants are held entitled to the total compensation of **Rs.8,45,162/-** as against Rs.8,95,840/-, along with interest at the rate of 12% per annum from the date of one month after the date of accident till its realization.

17. The appellant-Insurance Company is directed to deposit the amount of compensation awarded within six weeks from the date of receipt of a certified copy of this judgment.



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Accordingly, the appeal is ***allowed in-part***.

The excess amount deposited, if any, shall be refunded to the Insurance Company through RTGS.

**SD/-
(RAJESH RAI K)
JUDGE**

GPG
List No.: 1 SI No.: 16